

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**WESLEY KYLE GATES, #M-3927**

**PLAINTIFF**

**VERSUS**

**CIVIL ACTION NO. 1:11-cv-38-HSO-JMR**

**MIKE BYRD, *et al.***

**DEFENDANTS**

**ORDER ADOPTING REPORT AND RECOMMENDATIONS AND  
DISMISSING PLAINTIFF'S COMPLAINT WITHOUT PREJUDICE**

This cause comes before the Court on the Report and Recommendations [38] of Chief United States Magistrate Judge John M. Roper, entered in this cause on February 24, 2012. Magistrate Judge Roper recommended that this case be dismissed without prejudice for Plaintiff's failure to prosecute. Report and Recommendations, at p. 3. Plaintiff did not file an objection to the Report and Recommendations.

Where no party has objected to the Magistrate Judge's Report and Recommendation, the Court need not conduct a de novo review of it. 28 U.S.C. § 636(b)(1) ("a judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court applies the "clearly erroneous, abuse of discretion and contrary to law" standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Plaintiff has been warned on multiple occasions that his failure to advise the Court of a change of address would be deemed as a purposeful delay and contumacious act and may result in his case being dismissed. *See, e.g.*, Order [3], at

p. 2; Order [6], at p. 3; Order [7], at p. 1. An Order to Show Cause [35] and an Amended Order to Show Cause [36] were mailed to Plaintiff on February 14, 2012. The envelope [37] containing both were returned, marked "RETURN TO SENDER" and "Released." The envelope [39] containing the Report and Recommendations [38] was also returned, marked "RETURN TO SENDER" and "Released." After review of the record, the Court, being fully advised in the premises, finds that the Report and Recommendations are neither clearly erroneous nor contrary to law, and should be adopted as the opinion of this Court.

**IT IS, THEREFORE, ORDERED AND ADJUDGED** that, the Report and Recommendations [38] of Chief United States Magistrate Judge John M. Roper, entered in this cause on February 24, 2012, should be, and the same hereby are, adopted as the finding of this Court.

**IT IS, FURTHER, ORDERED AND ADJUDGED** that, this case is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute.

**IT IS, FURTHER, ORDERED AND ADJUDGED** that, Defendants' pending Motion for Summary Judgment [29] is denied as moot.

**SO ORDERED AND ADJUDGED**, this the 23<sup>rd</sup> day of April, 2012.

*s/ Halil Suleyman Ozerden*

HALIL SULEYMAN OZERDEN  
UNITED STATES DISTRICT JUDGE